IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

WP(C).No. 4050 of 2007(F)

PETITIONER:

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1. K.J. ANTONY, S/O. JACOB,
   AGED 53 YEARS, JYOTHIS INDUSTRIES,
   MINI INDUSTRIAL ESTATE, KATTAPPANA, IDUKKI DIST.

2. SAJI JOSE, S/O. JOSE,
   AGED 39 YEARS, PULIMOOTTIL HOUSE, JYOTHIS METALS,
   MINI INDUSTRIAL ESTATE, KATTAPPANA.

3. A.M. VARGHESE, S/O. MATHEW,
   AGED 50 YEARS, ETTIYIL HOUSE, NARIYAMPARA P.O.,
   KATTAPPANA.

4. S.S. JAYA RAJ, S/O. CHITHARANNYA,
   AGED 51 YEARS, M/S. ZEEMA RUBBER PRODUCTS,
   MINI INDUSTRIAL ESTATE, RAJAKUMARI SOUTH,
   IDUKKI DIST.

5. CIJU P.SHAKKAR, AGED 35 YEARS,
   ETTIYIL HOUSE, NARIYAMPARA P.O., KATTAPPANA.

6. P.J. JAMES, S/O. JOSEPH,
   AGED 55 YEARS, PANDARIKUNNEL HOUSE, USHA PRESS,
   RAJAKUMARI SOUTH.

7. MOLLY GEORGE, W/O. GEORGE,
   AGED 42 YEARS, THACHATHU HOUSE, SURYA BLOCKS,
   RAJAKUMARI SOUTH, IDUKKI DIST.

BY ADV. SRI.T.V.GEORGE
SMT.LINDA GEORGE

RESPONDENTS:

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1. MANAGING DIRECTOR,
   IDUKKI DISTRICT MINI INDUSTRIES ESTATE (SERVICE)
   CO-OPERATIVE SOCIETY, NO.S.IND (1) 10, THODUPUZHA,
   NOW AT CHERUTHONI, IDUKKI DIST.

2. REGISTRAR (SECRETARY TO INDUSTRIES DEPARTMENT), MINI INDUSTRIAL ESTATE (SERVICE) CO-OPERATIVE SOCIETIES, GOVT.SECRETARIAT, TRIVANDRUM.

3. JOINT REGISTRAR (JOINT DIRECTOR OF INDUSTRIES AND COMMERCE AND DISTRICT INDUSTRIES CENTRE), IDUKKI.

4. INDUSTRIES DEVELOPMENT COMMISSIONERATE, DEPARTMENT OF INDUSTRIES AND COMMERCE, KERALA TRIVANDRUM, REP. BY ITS COMMISSIONER.

BY ADV. SRI.K.K.CHANDRAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 4050/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF AGREEMENT EXECUTED BETWEEN THE 1ST PETITIONER AND THE MANAGING DIRECTOR OF THE 1ST RESPONDENT – SOCIETY ON 11/9/84.

EXT.P2 COPY OF NOTICE DATED 16/1/07 ISSUED TO THE 1ST PETITIONER by the 1ST RESPONDENT.

EXT.P3 COPY OF NOTICE DATED 16/01/07 ISSUED TO THE 2ND PETITIONER BY THE 1ST RESPONDENT.

EXT.P4 COPY OF NOTICE DATED 16/01/07 ISSUED TO THE 3RD PETITIONER BY THE 1ST RESPONDENT.

EXT.P5 COPY OF NOTICE DATED 16/01/07 ISSUED TO THE 4TH PETITIONER BY THE 1ST RESPONDENT.

EXT.P6 COPY OF NOTICE DATED 16/01/07 ISSUED TO THE 5TH PETITIONER BY THE 1ST RESPONDENT.

EXT.P7 COPY OF THE NOTICE DATED 16/01/07 ISSUED TO THE 6TH PETITIONER BY THE 1ST RESPONDENT.

EXT.P8 COPY OF THE NOTICE DATED 16/01/07 ISSUED TO THE 7TH PETITIONER BY THE 1ST RESPONDENT.

EXT.P9 COPY OF CIRCULAR NO. 27/06 DATED 29/6/06 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETY, TRIVANDRUM.

EXT.P10 COPY OF REPRESENTATION DATED 17/02/2005 BEFORE THE HON'BLE MINISTER FOR CO-OPERATION BY THE 1ST PETITIONER.

EXT.P11 COPY OF THE RESOLUTION NO.3 DATED 7/8/04 PASSED BY THE 1ST RESPONDENT SOCIETY.

RESPONDENT'S EXHIBITS

EXT.R1(a) COPY OF THE PROCEEDINGS DATED 03/12/2005 OF THE GENERAL MANAGER DISTRICT INDUSTRIES CENTRE, IDUKKI.

EXT.R1(b) COPY OF THE CALCULATION STATEMENT IN RESPECT OF 1ST PETITIONER.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 4050 of 2007 F

Dated, this the 9th day of April, 2007

J U D G M E N T

Heard the learned counsel for the petitioners and the learned Standing Counsel appearing for 1st respondent.

2. Petitioners were allotted industrial sheds, the payment for which was to be made in 120 monthly instalments. The sale was on hire purchase basis and on account of chronic default, Society has initiated recovery proceedings, against which this WP(C) is filed. The learned counsel for the petitioners contended that payment could not be made on account of financial difficulties, as industries were not run on profit. The scheme was introduced in 1984 and by 1994 payment should have been made. Even though, cost of the industrial sheds have to be repaid without interest, petitioners have become liable for payment of interest only because they committed default. The learned counsel for the 1st respondent submitted that rate of interest charged is only 2% above the borrowing rate and funds are borrowed by the 1st respondent. It is admitted that the funds were mainly raised by 1st respondent through borrowing from State Co-operative Bank and if arrears are not recovered, 1st respondent will go bankrupt. However, since

petitioners were entitled to repay the loans without interest but for the default I feel rate of interest can be reduced to a reasonable level, if payments are made within a reasonable period. In the circumstance, this WP(C) is disposed of granting six equal monthly installments to the petitioners to clear the balance arrears with 9% simple interest from the date of default till date of payment. The first installment of which will be paid on or before 10th May 2007 and balance on or before 10th day of five succeeding months. Administrator of 1st respondent will give a statement of liability to each of the petitioners within a week from the date of production of a copy of this judgment for clearing liability as above. However, if petitioners commit default in payment of any installment, the installment facility and reduction of interest granted will stand automatically vacated on first default and it will be open to the 1st respondent to resume possession of the industrial sheds and proceed for recovery by sale of the same.

This WP(C) is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

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